UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

OCT 2 9 2013

William Durham, Assistant Director
West Virginia Department of Environmental Protection
601 57th St., SE
Charleston, West Virginia 25304

Dear Mr. Durham:

Thank you for the submittal of the redesignation requests and maintenance plans state implementation plan (SIP) revision for the 1997 and 2006 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) for the Charleston, West Virginia nonattainment area. This letter addresses the U.S. Environmental Protection Agency's (EPA) review of the adequacy of the insignificance findings for direct $PM_{2.5}$ and nitrogen oxides (NOx) in the Charleston, West Virginia nonattainment area.

Pursuant to 40 CFR 93.118(e)(4) and 40 CFR 93.109(f) of the Transportation Conformity Rule (40 CFR part 93, subpart A), EPA has reviewed the 1997 and 2006 $PM_{2.5}$ NAAQS redesignation requests and maintenance plans submittal as well as the justification for the finding of insignificance for direct $PM_{2.5}$ and also for NOx as a precursor of $PM_{2.5}$ in this Area.

The Transportation Conformity Rule in 40 CFR 93.109(f) states that a regional emissions analysis is no longer necessary if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor. A finding of insignificance does not change the requirement for a regional analysis for other pollutants and precursors and does not change the requirement for hot spot analysis. EPA opened the public comment period on the adequacy of the submitted SIP by posting to the EPA Office of Transportation and Air Quality's adequacy review website (http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm) on September 12, 2013. The comment period closed on October 15, 2013, and no comments were received.

EPA has considered these motor vehicle emissions budgets (budgets) in light of the current status of the Clean Air Interstate Rule (CAIR) and the Cross State Air Pollution Rule (CSAPR). The U.S. Court of Appeals for the D.C. Circuit issued a decision on July 11, 2008 to vacate and remand CAIR. North Carolina v. EPA, 531 F.3d 896 (D.C. Cir. 2008). On December 23, 2008, the Court granted EPA's motion for rehearing and revised its prior decision. Instead of vacating and remanding CAIR, the Court decided to remand the rule to EPA for further rulemaking. The Court decided to leave CAIR in place to "at least temporarily preserve the environmental values" of the rule. North Carolina v. EPA, 550F.3d 1176, 1178 (D.C. Cir. 2008).

On August 8, 2011 (76 FR 48208), EPA finalized CSAPR as a replacement for the remanded CAIR rule. On August 21, 2012 the D.C. Circuit issued a decision to vacate CSAPR. EME

Homer City Generation, L.P. v. EPA, 696 F.3d 7 (D.C. Cir. 2012). The court also ordered EPA to continue to administer CAIR pending the promulgation of a valid replacement. EPA and other parties filed petitions for certiorari to the U.S. Supreme Court. On June 24, 2013, the Supreme Court granted EPA's petition for certiorari.[1]

EPA is continuing to administer CAIR in accordance with the August 2012 decision. In light of the unique circumstances and for the reasons explained below, EPA has concluded that the motor vehicle emissions budgets for the Charleston Area are consistent with maintenance of the 1997 annual and 2006 $PM_{2.5}$ NAAQS. CAIR remains in place and enforceable and consistent with the *EME Homer City* decision[1], EPA will continue to administer CAIR pending development of a valid replacement rule. West Virginia's SIP revisions list CAIR as a control measure that was approved by EPA on August 6, 2009 (74 FR 38536) and became state-effective on May 1, 2008 for the purpose of reducing sulfur dioxide (SO_2) and NOx emissions. CAIR was thus in place and getting emission reductions when the Charleston Area monitored attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. The quality-assured, quality-controlled, certified monitoring data used to demonstrate the Area's attainment of both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS was also impacted by CAIR.

To the extent that West Virginia is relying on CAIR in its maintenance plans, the recent directive from the D.C. Circuit in EME Homer City ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the Court to develop a new rule and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. CAIR thus cannot be replaced until EPA has promulgated a final rule through a notice-and-comment rulemaking process, States have had an opportunity to draft and submit SIPs, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a Federal Implementation Plan (FIP) if appropriate. The Court's clear instruction to EPA that it must continue to administer CAIR until a "valid replacement" exists provides an additional backstop; by definition, any rule that replaces CAIR and meets the Court's direction would require upwind states to have SIPs that eliminate significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas. Thus, the maintenance plans' reliance on CAIR is acceptable, as either CAIR or its replacement will be in effect for the period covered by the maintenance plans.

West Virginia did not provide emission budgets for SO_2, volatile organic compounds (VOCs), or ammonia for Charleston, West Virginia nonattainment area because it concluded that emissions of these precursors from motor vehicles are not significant contributors to the Area's $PM_{2.5}$ air quality problem. The transportation conformity rule provision at 40 CFR 93.102(b)(2)(v) indicates that conformity does not apply for these precursors, due to the lack of motor vehicle emissions budgets for these precursors and state's conclusion that motor vehicle emissions of SO_2, VOCs, and ammonia do not contribute significantly to the area's $PM_{2.5}$ nonattainment problem. This provision of the transportation conformity rule predates and was not disturbed by

[1] The Supreme Court also granted the American Lung Association's petition forcertiorari.

[1] As noted above, EPA and other parties have filed petitions for certiorari asking the Supreme Court to review the D.C. Circuit's decision in EME Homer City.

the January 4, 2013 decision in the litigation on the $PM_{2.5}$ implementation rule.[2] EPA has preliminarily concluded that the State's decision to not include budgets for SO_2, VOCs, and ammonia is consistent with the requirements of the transportation conformity rule. That decision does not affect EPA's adequacy findings for the submitted direct $PM_{2.5}$ and NOx insignificance findings for the Charleston, West Virginia nonattainment area.

EPA has concluded that the insignificance findings satisfy the requirements of 40 CFR 93.118(e)(4)(iv), which requires that the budget(s), when considered together will all other emissions sources, is consistent with applicable requirements for maintenance. EPA bases its conclusion on the overall emissions from all sources in the nonattainment area, the low percentage of mobile source emissions contributing to the total emissions in the area, the current state of air quality, and the absence of state and local motor vehicle control measures in the SIP for these areas.

EPA will publish a notice in the Federal Register announcing this finding. If members of your staff have any questions regarding this finding, they may direct them to Mr. Gregory Becoat, at (215) 814-2036.

Sincerely,

Cristina Fernandez, Associate Director
Office of Air Program Planning

cc: Dr. John C. Brown, Executive Director
Brooke-Hancock-Jefferson Metropolitan Planning Commission

[2] EPA issued conformity regulations to implement the 1997 $PM_{2.5}$ NAAQS in July 2004 and May 2005 (69 FR 40004, July 1, 2004 and 70 FR 24280, May 6, 2005, respectively). Those actions were not part of the final rule recently remanded to EPA by the Court of Appeals for the District of Columbia in *NRDC v. EPA*, No. 08-1250 (Jan. 4, 2013), in which the Court remanded to EPA the implementation rule for the $PM_{2.5}$ NAAQS because it concluded that EPA must implement that NAAQS pursuant to the PM-specific implementation provisions of subpart 4 of Part D of Title I of the CAA, rather than solely under the general provisions of subpart 1.